

Agricultural Marketing Service, USDA

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good faith pursuant to the provisions of this part.

(j) To cause the books of the Control Committee to be audited by a competent accountant at least once each fiscal period and at such other time or times as the Control Committee may deem necessary or as the Secretary may request. Such audit shall indicate whether the funds have been received and expended in accordance with the provisions of this part.

(k) To appoint nomination committees if it deems proper for any or each nomination meeting held pursuant to § 917.21. Such nomination committees would canvas prospective members and alternate members to the commodity committees to determine their eligibility and willingness to serve and present a slate of nominees to the meeting or meetings. The presentation of nominees by the nominating committee at these meetings shall not exclude the right of any grower to nominate any eligible person at such meeting.

[41 FR 17528, Apr. 27, 1976, as amended at 56 FR 46369, Sept. 12, 1991; 76 FR 66605, Oct. 27, 2011]

EFFECTIVE DATE NOTE: At 76 FR 66605, Oct. 27, 2011, § 917.34 was suspended indefinitely, effective Oct. 28, 2011.

§ 917.35 Powers and duties of each commodity committee.

Each commodity committee shall have the following powers and duties:

(a) With regard to the respective fruit for which it was established, to establish production research and marketing research and development projects as authorized under § 917.39, to recommend to the Secretary regulation of shipments pursuant to the provisions of this part, and to possess such other powers and exercise such other duties as will properly effectuate the purpose of this part: *Provided, however,* That the Pear Commodity Committee shall approve actions under § 917.39 and make said recommendations pursuant to §§ 917.40 through 917.43 only upon the affirmative vote of not less than nine members of said committee.

(b) To make such rules and regulations with respect to fruit for which it was established as may be necessary to

effectuate the terms and provisions of this part.

(c) To forward to the Control Committee and to the Secretary a record of the minutes of each meeting of the commodity committee.

(d) To establish such other committees to aid the commodity committee in the performance of its duties under this part as may be deemed advisable.

(e) Each season prior to any recommendation to the Secretary for a regulation of shipments pursuant to §§ 917.40 through 917.43 to determine the marketing policy to be followed for the respective commodity during the ensuing fiscal period and to submit such policy to the Secretary, said policy report to contain, among other provisions, information relative to the estimated total production and shipments of the fruit by districts, information as to the expected general quality and size of fruit, possible or expected demand conditions of different market outlets, supplies of competitive commodities, such analysis of the foregoing factors and conditions as the committee deems appropriate, and the type of regulations of shipments expected to be recommended for the respective fruit.

(f) To submit as soon as practicable after the beginning of each fiscal year to the Secretary, for his approval, a budget of its expenses for such fiscal period, including its proportional share of the expenses of the Control Committee and an explanation of the items therein, and a recommendation as to the rate of assessment for the respective fruit for which the commodity committee was established.

(g) With the approval of the Secretary, to redefine the Districts into which the State of California has been divided under § 917.14 or change the representation of any representation area affecting the respective commodity committee: *Provided, however,* That if any such changes are made, representation on any such committee from the various representation areas shall be based, so far as practicable, upon the proportionate quantity of the respective fruit shipped from the respective representation area during the preceding three fiscal periods: *Provided*

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further, That the commodity committees shall follow the principle, so far as practicable, of assigning a member position on the commodity committees to any representation area from which five percent of regulated shipments have originated during such periods.

[41 FR 17528, Apr. 27, 1976, as amended at 56 FR 46369, Sept. 12, 1991; 71 FR 41352, July 21, 2006; 76 FR 66605, Oct. 27, 2011]

EFFECTIVE DATE NOTE: At 76 FR 66605, Oct. 27, 2011, § 917.35 was suspended indefinitely, effective Oct. 28, 2011.

EXPENSES AND ASSESSMENTS

§ 917.36 Expenses.

Each commodity committee is authorized to incur such expenses as the Secretary finds are reasonable and are likely to be incurred by the said commodity committee during each fiscal period for the maintenance and functioning of such committee, including its proportionate share of the expenses of the Control Committee; and for such research and service activities relating to handling of the fruit for which the commodity committee was established as the Secretary may determine to be appropriate. The funds to cover such expenses shall be acquired by the levying of assessments as provided in § 917.37.

EFFECTIVE DATE NOTE: At 76 FR 66605, Oct. 27, 2011, § 917.36 was suspended indefinitely, effective Oct. 28, 2011.

§ 917.37 Assessments.

(a) As his/her pro rata share of the expenses which the Secretary finds are reasonable and are likely to be incurred by the commodity committees during a fiscal period, each handler shall pay to the Control Committee, upon demand, assessments on all fruit handled by him/her. The payment of assessments for the maintenance and functioning of the committees may be required under this part throughout the period it is in effect irrespective of whether particular provisions thereof are suspended or become inoperative.

(b) The Secretary shall fix the respective rate of assessment, which handlers shall pay with respect to each fruit during each fiscal period in an amount designed to secure sufficient funds to cover the respective expenses,

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which may be incurred during such period. At any time during or after the fiscal period, the Secretary may increase the rates of assessment in order to secure funds to cover any later findings by the Secretary relative to such expenses, and such increase shall apply to all fruit shipped during the fiscal period.

(c) In order to provide funds to carry out the functions of the commodity committee prior to commencement of shipments in any season, shippers may make advance payments of assessments, which advance payments shall be credited to such shippers and the assessments of such shippers shall be adjusted so that such assessments are based upon the quantity of fruit shipped by such shippers during such season. Any shipper who ships fruit for the account of a grower may deduct, from the account of sale covering such shipment or shipments, the amount of assessments levied on said fruit shipped for the account of such grower.

[71 FR 41352, July 21, 2006, as amended at 76 FR 66605, Oct. 27, 2011]

EFFECTIVE DATE NOTE: At 76 FR 66605, Oct. 27, 2011, § 917.37 was suspended indefinitely, effective Oct. 28, 2011.

§ 917.38 Accounting.

If, at the end of a fiscal period the assessments collected are in excess of expenses incurred, each commodity committee, with the approval of the Secretary, may carry over such excess into subsequent fiscal periods as a reserve: *Provided*, That funds already in the reserve do not exceed approximately one fiscal period's expenses. Such reserve funds may be used (1) to cover any expenses authorized by this part and (2) to cover necessary expenses of liquidation in the event of termination of this part. If any such excess is not retained in a reserve, each handler entitled to a proportionate refund shall be credited with such refund against the operations of the following fiscal period or be paid such refund. Upon termination of this part, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate: *Provided*, That, to the extent practical, such funds